

United States District Court
Eastern District of Tennessee
Greeneville Division

STATE OF TENNESSEE, *ex rel.* ROBERT E.)
COOPER, JR., Attorney General and Reporter,)

Plaintiff,)

v.)

Case No. 2:12-cv-00053

MOUNTAIN AREA COMMUNICATIONS,)
LLC, *et al.*,)

Defendants.)

**AGREED FINAL JUDGMENT
AND STIPULATED PERMANENT INJUNCTION
AS TO DEFENDANT G.H. McDONALD**

On February 16, 2012, the State of Tennessee (“Plaintiff”), commenced a civil law enforcement action pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act , 15 U.S.C. §§ 6101 – 6108 (“Telemarketing Act”), and the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq.* (“TCPA”), to obtain a permanent injunction and other equitable relief against all Defendants in connection with their marketing and sale of magazine subscriptions and other goods and services in violation of the Telemarketing Act’s Telemarketing Sales Rule, 16 C.F.R. Part 310 (“TSR”) and the TCPA. An Amended Complaint was filed on April 18, 2012, adding certain additional facts and counts, and changing the status of two relief defendants to primary defendants.

Plaintiff and Defendant G.H. McDonald (“Defendant”), have agreed to the entry of this Agreed Final Judgment and Stipulated Permanent Injunction as to Defendant G.H. McDonald (“Judgment”) to resolve all matters of dispute between them in this action.

Plaintiff and Defendant have consented to the entry of this Judgment without trial or adjudication of any issue of law or fact herein and without Defendant admitting liability for any violations alleged in the Amended Complaint.

NOW THEREFORE, Plaintiff and Defendant, having requested that the Court enter this Judgment, and the Court, having considered the Judgment reached between Plaintiff and Defendant, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

Findings

1. This is an action by Plaintiff instituted under the Telemarketing Act, 15 U.S.C. §§ 6101 – 6108, the TSR, 16 C.F.R. Part 310, and the TCPA, Tenn. Code Ann. § 47-18-101 *et seq.* (“TCPA”). Pursuant to 15 U.S.C. § 6103(a), 16 C.F.R. 310.7, and Tenn. Code Ann. § 47-18-108 of the TCPA, Plaintiff has authority to seek the relief contained herein.

2. This Court has jurisdiction over the subject matter of this case and over the parties pursuant to 28 U.S.C. §§ 1331, 1337(a), and 15 U.S.C. § 6103, and supplemental jurisdiction over the state law claims of the State of Tennessee under 28 U.S.C. § 1367.

3. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c), 15 U.S.C. § 53(b) and (c), and 15 U.S.C. § 6103(e).

4. The activities alleged in the Amended Complaint are in or affecting the conduct of trade or commerce, as those terms are defined in Tenn. Code Ann. § 47-18-103(19).

5. The Amended Complaint states a claim upon which relief may be granted against Defendant under the Telemarketing Act, 15 U.S.C. § 6103(a), and the TCPA, Tenn. Code Ann. § 47-18-104(a) and (b).

6. Defendant agrees he has declined the assistance of legal counsel and acknowledges that by executing this Judgment he has expressly elected to proceed *pro se*. Defendant has entered into this Judgment freely and without coercion, and acknowledges

that he has read, understands, and is prepared to abide by the provisions of this Judgment.

7. Defendant agrees that the entry of this Judgment resolves all matters of dispute as set forth in the relief between Defendant and Plaintiff arising from the Amended Complaint in this action, up to the date of the entry of this Judgment.

8. Defendant waives all rights to seek appellate review or otherwise challenge or contest the validity of this Judgment and waives and releases any claim he may have against the Receiver, Plaintiff, their employees, representatives, or agents.

9. Defendant agrees that the facts as alleged in the Amended Complaint in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by Plaintiff to enforce its rights to any payment or money judgment pursuant to this Judgment, including but not limited to a nondischargeability complaint in any bankruptcy case. Defendant further stipulates and agrees that the facts alleged in the Amended Complaint establish all elements necessary to sustain an action by Plaintiff pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523 (a)(2)(A), and that this Judgment shall have collateral estoppel effect for such purposes.

10. Defendant agrees that this Judgment does not entitle him to seek or obtain attorney fees under any law, regulation or rule, and he further waives any rights to attorneys' fees that may arise under any law, regulation or rule.

11. Entry of this Judgment is in the public interest.

11. No costs shall be taxed against Plaintiff pursuant to Tenn. Code Ann. § 47-18-116(a)(5) and Defendant shall bear his own costs.

Definitions

For purposes of this Judgment, the following definitions shall apply:

1. **“Assisting other persons”** means providing any of the following services to

any person: (a) administering a magazine service; (b) administering a discount or benefits program; (c) performing customer service functions, including receiving or responding to customer complaints; (d) formulating or providing, or arranging for the formulation or provision of, any sales script or any other marketing material; (e) providing marketing services of any kind, including but not limited to solicitation of sales for any person or entity; (f) providing credit card merchant processing accounts, or otherwise providing access to a billing and collection system, such as a credit card or debit card, or to an individual's checking or savings account; (g) providing names of, or assisting in the generation of, potential customers; (h) performing or providing marketing or billing services of any kind; (i) performing fulfillment services; (j) purchasing sales orders; (k) acting as an officer or director of a business entity; or (l) providing telemarketing services.

2. **“Benefits program”** or **“discount program”** includes any program, membership, card, product, or other good or service, that purports to offer discounts, savings, or benefits on goods or services, or access to such discounts, savings, or benefits.

3. **“Clearly and conspicuously”** means a statement that, regardless of the medium in which it is made, is readily understandable and presented in such size, color, contrast, duration, physical or temporal location, or volume (if applicable), compared to other information with which it is presented, that it is readily apparent to the person to whom it is disclosed. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement is necessary to prevent other information from being misleading, deceptive or unfair, then the statement must be presented in close proximity to the other information, in a manner that is readily noticeable, readable and understandable, and it must not be obscured in any manner. To be clear and conspicuous, warnings, disclosures, limitations or exceptions must be set out in close temporal or physical

conjunction with the benefits or items described or referenced, or with appropriate captions, of such prominence that warnings, disclosures, limitations or exceptions, are not minimized, rendered obscure, presented in an ambiguous fashion, or intermingled with the context of the statement so as to be confusing or misleading or contradictory. The statement shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the statement shall be used in any communication.

4. “**Document**” is synonymous in meaning and equal in scope to the usage of the term in Fed. R. Civ. P. 34, and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained, extracted and translated, if necessary, through detection devices into reasonably usable form. A draft or non identical copy is a separate document.

5. “**Magazine service**” shall mean a magazine subscription service or subscription package (that combines two or more publications) for a term of more than one year for which payment is to be made in two or more installments (regardless of how the payments are spaced over the period of the subscription(s)) and where an entity other than the magazine publishers will bill and collect payment from the consumer.

6. “**Material fact**” means any fact that is likely to affect a person’s choice of, or conduct regarding, goods or services.

7. “**National Do Not Call Registry**” means the National Do Not Call Registry, which is the “do-not-call” registry maintained by the Federal Trade Commission pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).

8. “**Negative option feature**” shall be defined as set forth in Section 310.2(t) of the Telemarketing Sales Rule, 16 C.F.R. Part 310.

9. “**Outbound telephone call**” means a telephone call initiated by a telemarketer

to induce the purchase of goods or services or to solicit a charitable contribution.

10. “**Person**” means a natural person, organization, or other legal entity, including a corporation, partnership, proprietorship, association, cooperative, government or governmental subdivision or agency, or any other group or combination acting as an entity.

11. “**Receiver**” means temporary receiver Jeanne Barnes Bryant, Esquire, or Robert E. Moore, Esquire, as previously appointed by the Court.

12. “**Representatives**” shall have the same scope as Fed. R. Civ. P. 65(d)(2), and means Defendant’s successors, assigns, officers, agents, servants, employees, or attorneys, and any person or entity in active concert or participation with them who receives actual notice of this Judgment by personal service or otherwise.

13. “**Telemarketing**” means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call, whether or not covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310.

I. PROHIBITIONS AGAINST DECEPTIVE AND ABUSIVE BUSINESS AND TELEMARKETING PRACTICES

IT IS THEREFORE ORDERED that Defendant and his Representatives, whether acting directly or through any other person, in connection with the advertising, marketing, promotion, offering for sale, or sale of any good or service, specifically including, but not limited to, any magazine service, discount program or benefits program, are hereby permanently restrained and enjoined from engaging in or causing or assisting other persons to engage in or cause, violations of any provision of the TSR and TCPA, including, but not limited to, the following:

A. Misrepresenting, directly or by implication, any material aspect of the

performance, efficacy, nature, or central characteristics of the goods or services that are the subject of a sales offer.

- B. Misrepresenting, directly or by implication, any material restriction, limitation, or condition to purchase, receive, or use the good or service;
- C. Misrepresenting, directly or by implication, any material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policy, including but not limited to the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted to the consumer;
- D. Misrepresenting, directly or by implication, that any person or entity is affiliated with, endorsed or approved by, or otherwise connected to any person;
- E. Misrepresenting, directly or by implication, any material fact, including but not limited to, the total costs to purchase, receive, or use, and the quantity of, the good or service;
- F. Misrepresenting, directly or by implication, any material term, condition, restriction or limitation, of any offer with a negative option feature;
- G. Making a false, deceptive or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution;
- H. Failing in any outbound telephone call to disclose truthfully, promptly, and in a clear and conspicuous manner (i) the identity of the seller; (ii) the nature of the goods or services; and (iii) that the purpose of the call is to sell goods and services;
- I. Initiating any outbound telemarketing call to a person's telephone number on the National Do Not Call Registry of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services, or to persons who

previously advised Defendant they did not wish to receive calls unless:

- (1) the seller has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature of that person; or
- (2) the seller has an established business relationship with such person and that person has not previously stated that he or she does not wish to receive outbound telemarketing calls made by or on behalf of Defendant;

- J. Initiating any outbound call to a person at times other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location;
- K. Causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the consumer;
- L. Presenting to or depositing into, or causing a merchant, or an employee, representative, or agent of the merchant to present to or deposit into, the credit card system for payment, a credit card or debit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card or debit card transaction between the cardholder and merchant;
- M. Obtaining access to a credit card system through the use of a business relationship or affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system;
- N. Providing substantial assistance and support to any person, while knowing, or consciously avoiding knowing, that such person is engaged in acts and practices that violate the TSR; and

- O. Failing to keep, for a period of twenty-four (24) months from the date the record is produced, all;
- (1) substantially different advertising, brochures, telemarketing scripts, and promotional materials; and
 - (2) verifiable authorizations or records of express informed consent or express agreement required to be provided under the TSR.

II. PROHIBITION AGAINST RECEIVING COMPENSATION FROM DEFENDANTS' CUSTOMERS

IT IS FURTHER ORDERED that Defendant and his Representatives are permanently restrained and enjoined from collecting, receiving, billing, or attempting to collect from, bill, or receive, any form of compensation from any person to whom any Defendant or such Defendant's Representatives sold any goods or services.

III. MONETARY JUDGMENT

IT IS FURTHER ORDERED that Judgment is entered in favor of Plaintiff and against Defendant in the amount of Six Million Seven Hundred Thirty-Two Thousand Six Hundred Thirty-Nine Dollars (\$6,732,639.00), as equitable monetary relief for consumer injury caused by Defendant's alleged unlawful practices under the Telemarketing Act and TCPA; provided however, that subject to the provisions of the Conditional Stay of Judgment Against Defendant below, this Monetary Judgment shall be suspended.

IV. CONDITIONAL STAY OF JUDGMENT AGAINST DEFENDANT G.H. McDONALD

IT IS FURTHER ORDERED that:

1. Plaintiff's agreement to and the Court's approval of this Judgment are expressly premised upon the truthfulness, accuracy, and completeness of Defendant's

Financial Statement submitted to Plaintiff, dated April 5, 2012 (“Financial Statement”), and Defendant’s individual deposition of April 9, 2012 in this case, all of which Defendant asserts are truthful, accurate, and complete. Defendant and Plaintiff stipulate that Defendant’s Financial Statement and Deposition in this case provide the basis for the Monetary Judgment set forth herein and that Plaintiff has relied on the truthfulness, accuracy, and completeness of Defendant’s Financial Statement and Deposition in agreeing to this Conditional Stay of Judgment Against Defendant.

2. If, upon motion by Plaintiff, this Court finds that Defendant has (a) materially misstated in Defendant’s Financial Statement or Depositions, any fact relating to the value of any asset, (b) made any material misrepresentation or omitted material information concerning his financial condition by failing to disclose any asset that should have been disclosed in Defendant’s Financial Statement or Depositions, (c) made any other material misstatement or omission in Defendant’s Financial Statement or Depositions, (d) made any other material misstatement or omission in Defendant’s Affidavit Attesting to the Truthfulness of Individual Financial statement, the Court shall terminate the Suspension of Monetary Judgment section of this Judgment, and, without further adjudication, shall enter a modified judgment holding Defendant liable to Plaintiff in the amount of Six Million Seven Hundred Thirty-Two Thousand Six Hundred Thirty-Nine Dollars (\$6,732,639.00).

3. Upon reinstatement of the Monetary Judgment, the Court shall make an express determination that the Monetary Judgment shall become immediately due and payable by Defendant, and Plaintiff shall be entitled to interest computed from the day of entry of this Judgment at the rate prescribed under 28 U.S.C. § 1961, as amended, on the unpaid balance.

4. Plaintiff shall be permitted to execute on the Judgment immediately after the suspension is lifted and engage in discovery in aid of execution.

5. Any funds paid to Plaintiff pursuant to this Section shall be used for equitable monetary relief, including consumer restitution, and shall be distributed in accordance with the final order entered by the Court regarding the distribution of consumer restitution in this case.

V. REIMBURSEMENT

IT IS FURTHER ORDERED that the upon entry of this Judgment, Defendant shall receive a payment of One Thousand One Hundred Ninety Dollars (\$1,190.00) from American Publisher's Service, LLC, as reimbursement for monies already paid to the receivership estate.

VI. DISSOLVING OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze of assets of Defendant pursuant to the Temporary Restraining Order entered by this Court on February 16, 2012, shall be temporarily dissolved to permit Defendant to surrender any assets under this Judgment, and upon such surrender, shall be permanently dissolved.

VII. COOPERATION WITH PLAINTIFF

IT IS FURTHER ORDERED that Defendant shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the Amended Complaint, cooperate in good faith with Plaintiff, and use his best efforts to ensure that his Representatives cooperate with Plaintiff, and appear at such places and times as Plaintiff shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by Plaintiff. If requested in writing by Plaintiff, Defendant shall appear and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Amended Complaint, without the service of a subpoena. Defendant shall also cooperate and fully assist Plaintiff in identifying the name, address, telephone number, date

of purchase, program or product purchased, total amount paid, amount of any full or partial refund or chargeback, and payment information for consumers who were charged by Defendant or American Publisher's Service, LLC, and any further information Plaintiff deems necessary to effectuate any redress program for consumers.

VIII. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of (A) monitoring and investigating Defendant's compliance with any provision of this Judgment or any other Defendant to this action compliant with any other order, and (B) investigating the accuracy of Defendant's Financial Statement and Depositions upon which Plaintiff's agreement to this Judgment is expressly premised:

1. Within ten (10) business days of receipt of written notice from a representative of Plaintiff, Defendant shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in his possession or direct or indirect control to inspect the business operation;
2. In addition, Plaintiff is authorized to use all other lawful means, including but not limited to:
 - A. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69;
 - B. having its representatives pose as consumers, employees, or suppliers to Defendant, his employees, or any other entity managed or controlled in whole or in part by Defendant, without the necessity of identification

or prior notice and may record contact; and

3. Defendant shall permit representatives of Plaintiff to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Judgment. The person interviewed may have counsel present; provided however, that nothing in this Judgment shall limit Plaintiff's lawful use of compulsory process, pursuant to Tenn. Code Ann. §47-18-106 of the TCPA, to obtain any documentary material, tangible things, testimony, or information relevant to unfair, deceptive, misleading or abusive acts or practices in or affecting trade or commerce.

IX. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Judgment may be monitored:

1. For a period of three (3) years from the date of entry of this Judgment,
 - A. Defendant shall notify Plaintiff of the following:
 - (1) Any changes in Defendant's residence, mailing addresses, and telephone numbers, within ten (10) business days of the date of such change;
 - (2) Any changes in Defendant's employment status (including self-employment), and any change in his ownership in any business entity, within ten (10) business days of the date of such change. Such notice shall include the name and address of each business that Defendant is affiliated with, employed by, creates or forms, or performs services for; a detailed description of the

nature of the business; and a detailed description of his duties and responsibilities in connection with the business or employment; and

(3) Any changes in Defendant's name or use of any aliases or fictitious names within ten (10) business days of the date of such change;

B. Defendant shall notify Plaintiff of any changes in structure of any business entity that he directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Judgment, including but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; or a change in the business name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any such change in the business entity about which Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant shall notify Plaintiff as soon as is practicable after obtaining such knowledge.

2. One hundred eighty (180) days after the date of entry of this Judgment and annually thereafter for a period of three (3) years, Defendant shall provide a written report to Plaintiff, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with this Judgment. This report shall include, but not be limited to:

A. Defendant's then-current residence address, mailing addresses, and

telephone numbers;

- B. Defendant's then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that he is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of his duties and responsibilities in connection with the business or employment;
 - C. A copy of each acknowledgment of receipt of this Judgment, obtained pursuant to the Section titled "Distribution of Judgment;" and
 - D. Any other changes required to be reported under this Compliance Reporting section of the Judgment.
- 3. Defendant shall notify the Plaintiff of the filing of a bankruptcy petition by him within fifteen (15) days of filing.
 - 4. For the purposes of this Judgment, Defendant shall, unless otherwise directed by Plaintiff's authorized representatives, send by overnight courier (not the U.S. Postal Service) all reports and notifications required by this Order to:

Deputy Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
425 Fifth Avenue North
Nashville, Tennessee 37243-3400

Re: State of Tennessee v. Mountain Area Communications, LLC, et al.,
Case No. 2:12-cv-00053.

Provided that, in lieu of overnight courier, Defendant may send such reports or notifications by facsimile to Plaintiff at (615) 532-2910.

X. RECORDKEEPING

IT IS FURTHER ORDERED that, for a period of six (6) years from the date of entry of this Judgment, Defendant, for any business for which he, individually or in concert with others, is the majority owner or directly or indirectly controls, is hereby restrained and enjoined from failing to create and retain the following records:

1. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
2. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
3. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
4. Complaints and refund requests (whether received directly or indirectly, such as through a third party) and any responses to those complaints or requests;
5. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and
6. All records and documents necessary to demonstrate full compliance with each provision of this Judgment, including but not limited to, copies of acknowledgments of receipt of this Judgment required by the sections titled "Distribution of Judgment" and "Acknowledgment of Receipt of Judgment" and

all reports submitted to Plaintiff pursuant to the Compliance Reporting section of this Judgment.

XI. DISTRIBUTION OF JUDGMENT

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Judgment, Defendant shall deliver copies of this Judgment as directed below:

1. Defendant as control person: For any business that Defendant controls, directly or indirectly, or in which he has a majority ownership interest, he must deliver a copy of this Judgment to (1) all principals, officers, directors, and managers of that business; (2) all employees, agents, and representatives of that business who engage in telemarketing; and (3) any business entity resulting from any change in structure set forth in the Compliance Reporting section of this Judgment. For current personnel, delivery shall be within five (5) business days of service of this Judgment upon Defendant. For new personnel, delivery shall occur prior to their assuming their responsibilities. For any business entity resulting from any change in structure set forth in the Compliance Reporting section of this Judgment, delivery shall be at least ten (10) business days prior to the change in structure.
2. Defendant as employee or non-control person: For any business where Defendant is not a controlling person of a business but otherwise engages in telemarketing, he must deliver a copy of this Judgment to all principals and managers of such business before engaging in such conduct.
3. Defendant must secure a signed and dated statement acknowledging receipt of the Judgment, within thirty (30) days of delivery, from all persons receiving a copy of the Judgment pursuant to this Section.

XII. ACKNOWLEDGMENT OF RECEIPT OF JUDGMENT

IT IS FURTHER ORDERED that Defendant, within five (5) business days of receipt of this Judgment as entered by the Court, must submit to the Plaintiff a truthful sworn statement acknowledging receipt of this Judgment.

XIII. PROTECTING CONSUMER PRIVACY

1. Defendant agrees that the consumer names, addresses, telephone numbers and other personally identifiable information gathered or otherwise obtained during any period when he conducted businesses, and during the implementation of this Judgment and the settlement discussions leading up to this Judgment, shall not be used for any purpose or provided to any person other than law enforcement for any reason, including but not limited to for the purposes of marketing to these consumers now or in the future.

2. Any lists and reports provided to the State of Tennessee by the Receiver, counsel for any of the Defendants or the Defendant and in the possession or control of the Defendant shall not be released to any person to protect the interest of consumer privacy, to prevent further marketing to these consumers and possible identity theft, other than law enforcement authorities or pursuant to state or federal law.

XIV. PENALTIES FOR FAILURE TO COMPLY WITH TENNESSEE CONSUMER PROTECTION ACT

Pursuant to the provisions of the Tennessee Consumer Protection Act, Tenn. Code Ann. §47-18-108(c), any knowing violation of the terms of this Judgment shall be punishable by civil penalties of not more than Two Thousand Dollars (\$2,000.00) for each violation, in addition to any other appropriate sanctions including but not limited to contempt sanctions and the imposition of attorneys' fees and civil penalties. Upon execution and filing of this Judgment, any subsequent failure to comply with the terms hereof is a prima facie evidence

of a violation of the Tennessee Consumer Protection Act.

XV. RELEASE

As to the civil cause of action asserted by the Tennessee Attorney General, this Judgment only resolves the Telemarketing Act and TCPA causes of action raised in the Amended Complaint by the Tennessee Attorney General based on the factual allegations contained in the Amended Complaint prior to entry of this Judgment. This Release does not release in any way:

- A. any private right of action;
- B. any tax liability of any entity;
- C. any Non-Settling Defendant's liability;
- D. any liability to American Express;
- E. any subsequent enforcement action against the Defendant.

XVI. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Judgment and lifting of the suspended judgment.

XVII. ENTRY OF JUDGMENT

IT IS FURTHER ORDERED that there is no just reason for delay, and the Clerk of Court is hereby directed to enter this Judgment immediately.

IT IS SO ORDERED.



United States District Judge

SO STIPULATED

For Plaintiff:

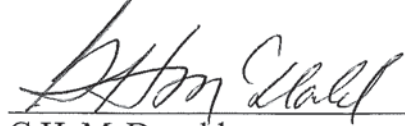
/s/ Robert E. Cooper, Jr.

Robert E. Cooper, Jr.

BPR # 10934

Tennessee Attorney General and Reporter

For Settling Defendant:



G.H. McDonald

/s/Olha N.M. Rybakoff

Olha N.M. Rybakoff, BPR # 24254

Albert L. Partee, III, BPR # 010278

Office of the Attorney General

Consumer Advocate and Protection Division

425 Fifth Avenue North, 2nd Floor

Nashville, TN 37243

Phone: (615) 532-2590

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albert.partee@ag.tn.gov